

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH STARLING individually and on
behalf of his minor children M.J.A and M.E.S,

Plaintiffs,

v.

WALMART INC., a Delaware Corporation,

Defendant.

NO. 2:21-cv-01156 – RSM-MLP

~~[PROPOSED]~~ PRETRIAL ORDER

I. JURISDICTION

Jurisdiction is vested in this court by virtue of: 28 U.S.C. § 1332. Plaintiffs originally filed suit in the Superior Court of Washington in and for the County of King; however, insofar as there is diversity among and between all parties, and the amount in controversy exceeds \$75,000 exclusive of interest and costs, Walmart removed this case to this Court under 28 U.S.C. §§ 1332, 1441, and 1446 on August 26, 2021.

II. CLAIMS AND DEFENSES

A. Plaintiffs will pursue at trial the following claims:

1. False Imprisonment
2. Tort of Outrage
3. Negligence

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B. Defendant will pursue the following affirmative defenses¹:

No. 2 - Plaintiffs' damages, if any, were proximately caused by the negligence of Plaintiffs in failing to exercise reasonable care.

No. 3 - Plaintiffs were comparatively negligent.

No. 4 - The risk of injury or damage to Plaintiffs was not foreseeable to Walmart.

No. 5 - Plaintiffs' claimed injuries and damages were due to actions of third parties.

No. 6 - Plaintiffs' claims are barred by some or all of the following: waiver, estoppel, laches, ratification, acquiescence, accord and satisfaction, and/or consent.

No. 7 - Walmart took precautions and affirmative actions that were consistent with the state of its knowledge at the time.

No. 8 - Walmart acted reasonably and/or did not breach any duty to Plaintiffs.

No. 11 - Walmart's allegedly tortious conduct was privileged as a matter of law.

No. 13 - The alleged conduct is not "outrageous" as defined by Washington law.

No. 15 - Walmart did not intend, or act with intent, to cause emotional distress or to injure Plaintiffs.

III. ADMITTED FACTS

The following facts are admitted by the parties: (Enumerate every agreed fact, irrespective of admissibility, but with notation of objections as to admissibility. List 1, 2, 3, etc.)

1. Mr. Starling's children, MJS and MES are African American. **Defendant objects on the basis of relevance (FRE 401-403), and subject to the Court's ruling on Def.'s MIL #5.**

¹ These defenses are numbered in accordance with their original-designated number in Walmart's Answer to Plaintiffs' Complaint. Walmart is tentatively withdrawing other affirmative defenses because Walmart does not intend to pursue those affirmative defenses based on the claims Plaintiffs are no longer pursuing, either voluntarily, or because those claims have been dismissed; however, Walmart reserves the right to reassert originally pled affirmative defenses, and maintains all of the other reservations in its Answer, depending on the nature of the proof offered by Plaintiffs at trial and the evidence that is ultimately admitted by the Court at trial.

1 2. MJS and MES walked to Walmart on the date of the incident, March 12, 2018,
2 alone.

3 3. MJS and MES entered Walmart alone on the date of the incident.

4 4. The Walmart in question is in Federal Way, Washington.

5 5. The Starling family lives nearby (approximately a five-minute walk).

6 6. Mr. Starling gave MJS and MES money to purchase items at Walmart.

7 **Defendant objects on the basis of relevance (FRE 401-403).**

8 7. MJS and MES were six- and ten-years-old on the date of the incident.

9 8. On the date in question, Walmart Asset Protection Manager Debra Utu observed
10 the Starling children alone in the store.

11 9. Utu approached the Starling children and asked them questions.

12 10. After Utu asked the Starling children questions, they followed her to the loss
13 prevention room.

14 11. Utu did not touch the children during the walk to the loss prevention office.

15 12. Utu called Joseph Starling while in the loss prevention office with the Starling
16 children.

17 13. Joseph Starling and Utu spoke briefly on the phone while Utu was in the loss
18 prevention office with the Starling children.

19 14. Starling became bothered and highly upset on the phone.

20 15. Following the phone call between Starling and Utu, Utu called Federal Way
21 Police.

22 16. Utu placed the call to Federal Way police at 19:30:41 PM (7:30 PM).

23 17. It was after dark at the time Utu made the call to Federal Way Police.

24 18. Immediately following the phone call from Walmart, Starling went to the
25 Federal Way Walmart to retrieve his children.

1 19. Upon entering Walmart, Starling approached the customer service section of the
2 store and was informed that his children were in the loss prevention office.

3 20. The loss prevention office is a secure area of Walmart that is generally off limits
4 to the public.

5 21. After learning the whereabouts of his children, Starling proceeded to the loss
6 prevention office door.

7 22. At or around the time Starling proceeded towards the loss prevention door,
8 Debra Utu closed the door from inside the office.

9 23. Starling stood at the office door knocking continuously and requesting and
10 demanding the return of the Starling children to him.

11 24. Utu did not open the door or give the Starling children to Joseph Starling while
12 awaiting the arrival of police.

13 25. Police arrived on scene after Starling, at 19:39:40 PM (7:39 PM).

14 26. Police asked Starling to calm down.

15 27. Starling had an emotional outburst after being asked to calm down because
16 Walmart had still not released his children to him.

17 28. The Federal Way Police placed Mr. Starling in handcuffs until he was calm.

18 29. The children were in the loss prevention office for roughly 20 minutes, from the
19 time of Utu's approach until the release of the children to Joseph Starling after the police
20 arrived.

21 30. No party was charged with any crime related to the above-described events.

22
23 IV. ISSUES OF LAW

24 The parties cannot agree on the issues of law, and therefore submit the following separate
25 statements for the Court's consideration:

1 A. Plaintiffs' Proposed Issues of Law:

2 1. Whether Walmart associate Debra Utu actions were negligent when she
3 detained the Starling children in the loss prevention office after Mr. Starling requested his
4 children be released to him

5 2. Whether Walmart willfully detained one or more Plaintiffs', without their
6 consent, without legal authority and interfered with the Plaintiffs' movement or freedom.

7 3. Whether Walmart actions were extreme and outrageous and recklessly inflicted
8 severe emotional distress on one or more Plaintiffs by virtue of engaging in conduct that was
9 outrageous and extreme.

10 B. Defendant's Proposed Issues of Law:

11 1. Whether Walmart associate Debra Utu acted reasonably when she approached
12 the two minor Starling children who were alone in the Federal Way Walmart, after dark, and
13 escorted those children to the loss prevention office in order to call their guardian.

14 2. Whether Walmart intentionally deprived one or more Plaintiffs' movement or
15 freedom to remain in the place of their lawful choice by physical force, threat of force, or by
16 conduct reasonably implying that force would be used.

17 3. Whether Walmart intentionally or recklessly inflicted severe emotional distress
18 on one or more Plaintiffs by virtue of engaging in conduct that was outrageous and extreme.

19 4. Whether Joseph Starling acted unreasonably with respect to the events at issue.

20 5. Whether Plaintiffs caused or contributed to their own claimed damages.

21 6. Whether one or more Plaintiffs consented to the acts done by Walmart.

22 V. EXPERT WITNESSES

23 The parties do not intend to call any expert witnesses.
24
25

VI. OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(As to each witness, expert or others, indicate “will testify,” or “possible witness only.” Also indicate which witnesses, if any, will testify by deposition. Rebuttal witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial, need not be named.)

(a) On behalf of Plaintiff:

1. Joseph Starling
c/o James Bible Law Group
14205 SE 36th Street Suite 100
Bellevue, WA 98006
(425) 519-3675

Joseph Starling is the Plaintiff and father of minor children M.J.A. and M.E.S. and who has knowledge of the facts of his claims and his children’s claims against the Defendant. Mr. Starling will testify.

2. Minor Plaintiff M.J.S.
c/o James Bible Law Group
14205 SE 36th Street Suite 100
Bellevue, WA 98006
(425) 519-3675

M.J.A is a Plaintiff, and who knowledge of the facts of her claims and her brother’s and father’s claims against the Defendant. M.J.A. will testify.

3. Minor Plaintiff M.E.S
c/o James Bible Law Group
14205 SE 36th Street Suite 100
Bellevue, WA 98006
(425) 519-3675

M.E.S is a Plaintiff, and who knowledge of the facts of his claims and his sister’s and father’s claims against the Defendant. M.E.S. may testify.

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(b) On behalf of Defendant: (follow same format).

1. Debra Utu
c/o Williams Kastner
601 Union St., Suite 4100
Seattle, WA 98101

Debra Utu will testify as to her knowledge of the facts and circumstances surrounding the alleged incident, as well as to her understanding of Walmart policies, procedures, customs and practices. Debra Utu will also testify regarding her background and experience as an asset protection associate at the Federal Way Walmart.

2. Responding Officer (Seth Hanson, Ret.)


Officer Seth Hanson will testify as to his knowledge of the facts and circumstances surrounding the alleged incident, and regarding the police response and investigation into the events in question. Officer Hanson will also testify regarding his background and experience in responding to incidents similar to the one in question.

3. Federal Way Police Department Records Custodian
33325 8th Ave. S. – Suite 101
Federal Way, WA 98003

An authorized custodian of records for the Federal Way Police Department will testify as to the Department's standard policies and practices surrounding creation and retention of records documenting emergency response incidents, including but not limited to production and retention of computer-aided dispatch or "CAD" logs.

4. Corporate Representative/FRCP 30(b)(6) Representative of Walmart
c/o Williams Kastner
601 Union St., Suite 4100
Seattle, WA 98101

An authorized corporate representative will testify on behalf of Walmart, consistent with the provisions of FRCP 30(b)(6), as to Walmart policies and procedures that relate to the events in question, and regarding the reasonableness and appropriateness of Walmart's response considering the totality of the circumstances at issue.

5. Manny Archuleta
c/o Williams Kastner
601 Union St., Suite 4100
Seattle, WA 98101

Manny Archuleta is the current store manager of the Federal Way Walmart. Walmart may call Mr. Archuleta to testify regarding current store operations and/or regarding the facts and circumstances surrounding the alleged incident.

Plaintiff has filed a renewed Motion in Limine that will be heard by the Judge on the first day of trial regarding newly undisclosed evidence and undisclosed witnesses.

VII. EXHIBITS

Identify each exhibit with a number, which becomes the number for the exhibit at the trial and appears on the exhibit tag with the following information in table format:

Plaintiffs' Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
1	Walmart's Answer to the Plaintiffs Complaint	Stipulated	Disputed	Relevance (FRE 401-403); MIL Nos. 5, 8. Some or all of Walmart's Answer and affirmative defenses relate(s) to issues that are	

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				no longer in dispute, including Plaintiffs' discrimination cause of action. Thus, introducing Walmart's Answer to those and other claims would be confusing, misleading, and prejudicial under FRE 403. More simply, nothing in the Answer is relevant as defined in FRE 401; Walmart's Answer is not evidence that makes any of Plaintiffs claims more or less probable.	
2	Walmart's Responses to Plaintiffs First Set of Interrogatories and Requestion for Production and Exhibits	Stipulated	Disputed	Relevance (FRE 401-403); MIL Nos. 5, 8. Consistent with the immediate-above objection, introducing all of Walmart's Responses without redaction, limitation, or context would violate FRE	

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401-403 and the Court's Order on Walmart's Motions in Limine. To the extent Plaintiffs wish to introduce particular responses that are relevant to claims still being pled, the Court could make determinations as to those specific offers on an item-by-item basis; however, an undifferentiated offer of Walmart's discovery responses as evidence is an invitation to the jury to consider claims that are no longer in dispute, and worse, to decide this case on bases beyond facts and law relevant to the claims that remain at issue.

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3	Walmart's Supplemental Investigation and Detention Guide Policy AP-09			Relevance (FRE 401-403); MIL No. 8.	
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Defendant's Exhibits

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
A1	CAD Log			Objection FRE 106, 401-403, 602, 802, 904	
A2	7 photos of Federal Way Walmart			Objection. Photos were requested during discovery and Defendants failed to provide this discovery FRE 401-403, 602, 802	

The Parties' Objection Code:

MIL	Subject of a Motion in Limine
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VIII. ACTION BY THE COURT

(a) This case is scheduled for trial before a jury on May 22, 2023, at 9:00 a.m.

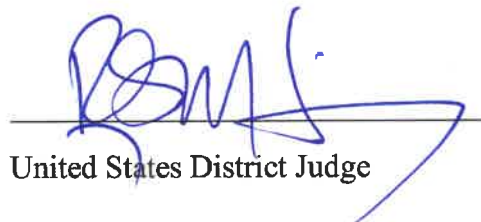
(b) Trial briefs shall be submitted to the court on or before May 17

(c) (Insert any other ruling made by the court at or before pretrial conference.) Per the Court's 4/28/2023 Minute Entry filed in this matter, trial day will run from 9:00 a.m. to Noon, and then from 1:00 p.m. to 4:15 p.m.—but possibly slightly longer depending on the needs of the parties and the discretion of the Court. Trial is expected to last 4-5 days. Each side will have 25-30 minutes for voir dire following the Court's general questions, with three (3) peremptory challenges per side (simultaneous). A jury of 8 (or 9) will be empaneled. The parties are allotted 30 minutes for opening statements and closing arguments. Parties are ordered to submit a neutral statement of the case by May 17, 2023.

This order has been approved by the parties as evidenced by the signatures of their counsel.

This order shall control the subsequent court of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this 22 day of May 2023


United States District Judge

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1 FORM APPROVED:

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9 -AND-

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